

Statement by

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before

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Public Buildings, and Emergency Management  
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regarding

Snow Disasters for Local, State and Federal  
Governments in the National Capital Region: Response  
and Recovery Partnerships with FEMA

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Madam Chair and Members of the Subcommittee:

My name is Carter Kimsey and I am the President of Local 3403, National Science Foundation of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 federal and District of Columbia workers represented by AFGE, I thank you for the opportunity to testify today on federal policies to facilitate continuity of operations in emergencies or when disaster strikes.

The snowstorms in the winter of 2010 in our area might not deserve the label of "disaster" but they did make transportation to and from many federal workplaces unsafe, impractical, and in some cases, impossible. We believe that the Office of Personnel Management acted prudently when it either closed or delayed the opening federal offices in the Washington, DC region. Hundreds of thousands were without power, had no access to public transportation, could not drive their own vehicles because neither side streets nor main roads had been plowed, and could not walk because sidewalks had not been shoveled or else were impassible because plows had moved snow upon them.

The question is: are there policies that the government could put in place that would allow more federal employees to continue to do their jobs during future disasters, than were able to do so this year? We can reasonably expect that the future will include challenges that resemble this year's extreme weather, and it is therefore incumbent upon the federal government to put in place rules and policies that will allow the greatest possible continuity of operations.

There is one obvious answer to this question, and that is to put into place the material and policy infrastructure to vastly expand telework for federal employees. Telework, the ability of employees to work from locations other than the office, has become a critical part of strategic planning for both agencies seeking to find more efficient means of carrying out their missions in both normal and emergency circumstances, as well as allowing workers to strike a better balance between work and family. The FY 2001 Department of Transportation appropriations law required agencies to establish policies that would allow eligible federal workers to telework to the maximum extent possible. Experience in the federal and private sectors has proven that effectively managed telework programs strongly support workforce recruitment and retention, managing office space and overhead costs, and addressing environmental and energy concerns. And they provide an invaluable means for continuity of operations during an emergency.

The OPM's most recent report to Congress on telework found that the number of regular federal teleworkers had declined from 2005 to 2006. Only 7.7% of the federal workforce participates in telework, although more than half of all federal

workers currently hold jobs classified as eligible for telework. Even more telling was the finding by a recent Federal Human Capital Survey that only 22% of all workers were satisfied with their telework situation, while 44% stated they had no basis on which to answer the question, indicating that telework is not an option for close to half of all federal workers. When just over a fifth of federal employees express dissatisfaction with their telework options, and it is in the interest of the federal government to promote telework for numerous reasons, including continuity of operations in emergencies and disasters, the time has come to expand telework opportunities.

Madam Chair, two weeks ago I represented AFGE at an OPM-sponsored thought forum on telework. Among the recommendations developed by participants were to have managers determine *before a job announcement is posted* whether and what level of telework opportunities would be available to the employee hired for the position. We believe this would help applicants determine whether the job would be a good fit for them before they have been hired. And since telework will be an added incentive for the best and brightest candidates to apply, managers may get in the habit of thinking about telework as an attractive benefit of the job, rather than a detriment to the agency's mission. Additionally, the thought forum explored ways to make telework the "norm" for the Federal workforce. Their report is expected shortly. My major impression of the forum is that if Director Berry's enthusiasm is any predictor of our future success, we can make telework the norm.

### ***Legislative Efforts to Encourage Telework***

Two bills are currently before the Congress that would take steps to expand federal telework. The Telework Enhancement Act of 2009 (S. 707) was reported out of the Committee on Homeland Security and Governmental Affairs in May, 2009. The Telework Improvements Act of 2009 (H.R. 1722) was reintroduced by Representative John Sarbanes (D-MD). Both bills require that all federal workers be considered eligible for telework unless the agency shows they are ineligible. Under current law, federal workers must overcome the presumption that they are *ineligible* for telework unless the agency determines otherwise. However, while the bills require agencies to appoint a "Telework Managing Officer" to report to Congress information on the number of workers involved in telework programs, they lack an enforcement mechanism if agencies fail to meet the telework requirement. The bills also do not address the right of unions to communicate or represent their members in telework situations, or address travel expense issues for workers who live outside the commuting area of their duty station but who are required to report to the office for meetings or other assignments, often at little notice and great expense to the worker.

AFGE members working at agencies with established telework programs such as the Center for Medicare and Medicaid Services and Citizenship and Immigration

Services report that those agencies have self-imposed an arbitrary “cap” on the number of workers allowed to participate in telework. At my own agency, the National Science Foundation (NSF), although we have succeeded in a negotiating telework program, the union was forced to trade off the right to file any grievances on the matter, regardless of their merit. This makes it almost impossible to ensure that telework at NSF is applied fairly and uniformly to the workforce. Our experiences are reflected by a 2007 study by the Telework Exchange Federal Managers Association study finding that only 35% of federal managers believe their agencies support telework, despite a 2001 Congressional mandate.

The snows of 2010 are only the most recent event that highlighted the need for more extensive telework opportunities in the federal government. The 2009 H1N1 flu outbreak focused attention on the low numbers of federal workers participating in telework programs and the need for the federal government to increase agency and employee participation in telework programs. In April 2009, the Office of Personnel Management issued a plan to increase the number of federal workers who telework. The plan consists of a review of agency telework policies, encouraging agencies to establish a telework manager, and the convening of an advisory group of telework program managers to help formulate standards for telework policies.

AFGE supports extending telework opportunities to all eligible employees. However, we believe it is important that these programs not interfere with the ability of unions to communicate with their members. It is especially important that unions have access to the agency’s e-mail system to broadcast information to the entire unit, including those who telework. In addition, it is crucial that union officials be able to perform representation activities while teleworking. Further, workers should not be forced to forgo the full benefits of union membership solely because they participate in telework programs. Workers who telework from outside the commuting area of their duty station should be compensated when they are required to travel to the duty station for meetings with their supervisors. These conditions are necessary to make telework successful and congressional intent a reality for federal workers.

Both bills from the 111<sup>th</sup> Congress represent good steps in the right direction by removing unnecessary barriers to the ability of federal workers to participate in telework programs. However, given the advances in technology that readily facilitate telework, the benefits of telework programs that allow the work of the federal government to continue in the event of natural disasters or events such as pandemics, and the need to conserve resources, the bills should take additional steps so that access to telework is a real option for the majority of federal workers.

### ***AFGE's efforts to address Continuity of Operations during Emergencies through Collective Bargaining***

AFGE has tried with mixed success to negotiate collective bargaining agreements that address the question of how to proceed in the context of disasters and emergencies. In some cases, we have not succeeded in persuading agencies to agree to contract language, but AFGE is persistent in trying to propose language that clarifies and makes consistent agency policies regarding emergencies and disasters. At the Social Security Administration (SSA), AFGE is attempting to negotiate language that would bind the agency to follow OPM's guidelines for disasters when evacuation occurs. OPM's guidelines recommend pay continuation, reimbursement of costs incurred by employees and their families during evacuations such as rent and hotel expenses, and the cost for transportation home after a disaster ends. In addition, AFGE is seeking from SSA to allow evacuation of offices for 24 hours of daylight when there is a hurricane warning, no required reentry after the hurricane until a health and safety inspection certifies that the office is safe, and excused absence in order to assess damage to a worker's residence. AFGE's SSA locals situated in earthquake zones have also negotiated "shelter in place" agreements that include earthquake and shelter "kits," as well as language requiring earthquake and shelter in place drills.

Extreme weather is not unusual in Fargo, North Dakota. Last year, Fargo's VA hospital was evacuated as the Red River crested and flooding of the entire town was threatened. This year Fargo faces the same circumstances. Our Fargo local, however, reports that hospital workers are expected to report to work regardless of weather and regardless of announced closings at other federal facilities. When they have done so, there has been little recognition of their heroic efforts. Our members have been particularly insulted by the disparities in recognition for essential employees who make it to work when no one could reasonably expect them to do so: managers have been treated to elaborate paid meals, while rank and file nurses, nursing assistants, and licensed practical nurses received ice cream bars.

AFGE locals in the Department of Agriculture have tried, but failed, to negotiate emergency preparedness plans with agency management. The USDA requires employees to stay in areas with mandatory evacuations to provide agency services. The employees believe that their designation as "essential" during emergencies is driven by private industry demands rather than any objective reality of their necessity to public safety during evacuation periods. In other agencies, employees are required to be at work not because they are essential to the provision of public safety, but because the agency's clients must meet legal deadlines. This type of issue has arisen at the Equal Employment Opportunity Commission (EEOC), where employees must come to work under even extremely adverse weather conditions in order to meet time frames for filing charges. Outside of the Washington, DC area, EEOC regional directors have

discretion to decide issues such as office closings and delayed openings, regardless of what the local Federal Executive Board recommends.

The problem with giving individual regional or local agency heads the discretion to “go it alone” with respect to treatment of employees during emergencies, disasters, or severe weather was highlighted this winter when Transportation Security Officers at Dulles and Philadelphia Airports were counted as Absent Without Leave (AWOL) when they missed work during the snowstorm. There was mass confusion among TSOs because of the chaotic application of rules by TSA management. Employees were marked AWOL during the storm despite being unable to come to work because of the dangerous conditions on the roads. TSOs at Reagan National and Thurgood Marshall BWI did not encounter the same problems. Ultimately, because of AFGE’s successful advocacy on Capitol Hill and in the media, TSA reversed the actions of Dulles management, and the affected employees no longer have AWOLs on their records. These experiences demonstrate clearly the need for consistency throughout the government, and a right for employees, even emergency personnel, to be granted administrative leave during emergencies, disasters, or severe weather.

### ***AFGE’s Involvement with the Federal Advisory Council on Occupational Safety and Health (FACOSH)***

AFGE’s most recent involvement with FACOSH was focused on learning from the federal government’s policies and experiences during the 2009 H1N1 influenza outbreak. The group issued a set of recommendations to the Secretary of Labor that included asking agencies to recognize that they are responsible for identifying and abating known hazards that could affect the safety and health of their workers (including H1N1). The FACOSH also recommended that agency managers include workers in all pandemic planning processes, and recognize that OSHA be treated as the lead authority for federal workforce safety. Communicating with the workforce regarding hazard assessments and providing training for senior agency officials on how to protect employees during a pandemic were also emphasized. Unfortunately, we must hope that these recommendations will be followed prospectively. The FACOSH study found that in far too many instances, agencies did not take the proper steps to protect their employees from infection, and it was good luck, more than good implementation of a comprehensively thought-out policy that allowed the federal workforce to escape mass infection.

### ***Conclusion***

We believe that the single most important policy change that the federal government can pursue with regard to its interest in being able to continue to operate in emergencies, disasters, and extreme weather conditions is to expand telework to as much of the federal workforce as possible. The rewards of expanding teleworking opportunities go beyond solving the continuity of

operations problem. Telework is a valuable recruitment and retention tool, a productivity-enhancer, and a boon to the environment. Beyond expanding telework, we believe that federal agencies should be required to address issues such as the special costs incurred by federal employees in getting to work under extreme conditions through the collective bargaining process. Likewise, employees must be made aware of their status as emergency essential employees prior to an emergency, and failure of management to do so should be addressed in collective bargaining agreements as well. The numerous practical issues that arise in the context of trying to keep a federal agency's operations running in extreme circumstances are proper subjects for collective bargaining, and it is contrary to the public good for agency managers to refuse negotiate over such issues.

This concludes my testimony. I will be happy to answer any questions you may have.